

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

ROW VAUGHN WELLS, INDIVIDUALLY)
AND AS ADMINISTRATRIX OF THE)
ESTATE OF TYRE DEANDRE NICHOLS,)
DECEASED,)

Plaintiffs,)

v.)

CASE NO. 2:23-CV-02224

THE CITY OF MEMPHIS, A)
MUNICIPALITY; CHIEF CERELYN DAVIS,)
IN HER OFFICIAL CAPACITY; EMMITT)
MARTIN III, IN HIS INDIVIDUAL)
CAPACITY; DEMETRIUS HALEY, IN HIS)
INDIVIDUAL CAPACITY; JUSTIN SMITH,)
IN HIS INDIVIDUAL CAPACITY;)
DESMOND MILL, JR. IN HIS INDIVIDUAL)
CAPACITY; TADARRIUS BEAN, IN HIS)
INDIVIDUAL CAPACITY; PRESTON)
HEMPHILL, IN HIS INDIVIDUAL)
CAPACITY; ROBERT LONG, IN HIS)
INDIVIDUAL CAPACITY; JAMICHAEL)
SANDRIDGE, IN HIS INDIVIDUAL)
CAPACITY; MICHELLE WHITAKER, IN)
HER INDIVIDUAL CAPACITY; DEWAYNE)
SMITH, IN HIS INDIVIDUAL CAPACITY)
AND AS AGENT OF THE CITY OF)
MEMPHIS,)

Defendants.)

**RULE 26(f) REPORT OF PARTIES' PLANNING MEETINGS
AND DISCOVERY PLAN**

Counsel for Plaintiff Row Vaughn Wells, individually and as Administratrix of the Estate of Tyre Nichols, deceased (“Plaintiff”); and counsel for Defendant City of Memphis (“the City”); Counsel for Defendant Chief Cerelyn Davis (“Chief Davis”); Counsel for Defendant Robert Long; Counsel for Defendant Jamichael Sandridge; and Counsel for Defendant Michelle Whitaker jointly submit the following joint 26(f) Report and Discovery Plan (“Report”).

Counsel for Defendant Emmitt Martin III, Defendant Demetrius Haley, Defendant Justin Smith, Defendant Tadarrius Bean, Defendant Preston Hemphill, and Defendant Dewayne Smith (“Defendant Officers”) participated in 26(f) conferences as noted below. However, this Report is submitted with the express understanding that the Defendant Officers do not agree to the participation in the discovery plan until their Motions to Stay Civil Proceedings have been ruled upon, in consideration of protecting their Fifth Amendment rights.

1. Summary of Rule 26(f) conference participation:

- a. The following persons participated in a Rule 26(f) conference on July 28, 2023 by Zoom video conference:
 - i. Antonio Romanucci, Bryce Hensley, Sarah Raisch, and David Mendelson representing the Plaintiff.
 - ii. Bruce McMullen and Jennie Vee Silk representing Defendants the City and Chief Davis.
 - iii. Stephen Leffler representing Defendant Demetrius Haley.
 - iv. Florence Johnson representing Defendant Emmitt Martin III.
 - v. Martin Zummach representing Defendant Justin Smith.
 - vi. Deborah Godwin, representing Defendant Prestin Hemphill and

Defendant Dewayne Smith.

vii. Laura Smittick representing Defendant JaMichael Sandridge.

viii. Robert Spence representing Defendant Michelle Whitaker.

b. The following persons participated in a Rule 26(f) conference on July 31, 2023 by Zoom video conference:

i. David Mendelson, Bryce Hensley, and Sarah Raisch representing Plaintiff.

ii. John Perry representing Defendant Tadarrius Bean.

c. The following persons participated in a Rule 26(f) conference on July 31, 2023 by email:

i. Sarah Raisch representing Plaintiff.

ii. Darrell O'Neal representing Defendant Robert Long.

d. Copies of this Report, as well as the Parties' Joint Proposed Scheduling Order were circulated via email to all Counsel of Record listed above for their input numerous times from August 1, 2023 until the date of filing.¹

2. Initial Disclosures: The Parties² will complete the initial disclosures required by Rule 26(a)(1) by September 8, 2023.

¹ Counsel for Defendant Desmond Mills, Jr., Clyde W. Keenan, made his appearance on August 29, 2023 and filed a Motion for Joinder as to the Motions to Stay on the same day. He has since been copied on email correspondence between all Parties, including those discussing this Discovery Plan.

² The Parties contemplated in the remainder of the Report are Plaintiff, the City of Memphis, Chief Davis, Defendant Long, Defendant Sandridge, and Defendant Whitker. All other parties decline to participate in the interest of protecting their clients Fifth Amendment rights.

3. Discovery Plan: The parties propose the following discovery plan-

a. Plaintiff will require discovery in the following areas:

- i. The underlying incident on January 7, 2023.
- ii. The actions and inactions of the named Defendants on January 7, 2023.
- iii. The hiring, training, and supervision of the named Defendants involved in the underlying incident on January 7, 2023.
- iv. The hiring, training, and supervision of the entire SCORPION Unit within the Memphis Police Department.
- v. The hiring, training, and supervision of all police officers within the Memphis Police Department.
- vi. The City of Memphis' hiring of Chief Cerelyn Davis.
- vii. The City of Memphis' Policies, Practices, and Customs related to policing and those described in Plaintiff's Complaint dating back to 2017.
- viii. The City of Memphis' knowledge pertaining to the use of police suppression units (i.e., SCORPION and REDDOG), constitutional policing, and constitutional violations.
- ix. All other factual allegations detailed in Plaintiff's Complaint.

b. Defendants, the City of Memphis and Chief Cerelyn Davis in her official capacity, will require discovery in the following areas:

- i. The motives of Defendants Emmitt Martin III, Demetrius Haley, Justin Smith, Desmond Mills, Jr. and Tadarrius Bean, and Preston Hemphill (collectively, "Officer Defendants") related to the January 7, 2023

incident alleged in the Complaint.

- ii. The relationship of the Officer Defendants to Tyre Nichols prior to the January 7, 2023.
 - iii. All other factual allegations detailed in Plaintiff's Complaint.
- c. All discovery shall be commenced and completed as articulated in the Parties' Joint Proposed Scheduling Order submitted to the Court. The proposed deadline for completing all discovery is April 30, 2024.
 - d. In accordance with Federal Rule of Civil Procedure 33, the maximum number of interrogatories by each party to any other party will be limited twenty-five (25), unless stipulated by the parties or directed by the Court.
 - e. Requests for Production shall be governed by Federal Rule of Civil Procedure 34.
 - f. Requests for Admission and timelines for responding to requests shall be governed by Federal Rule of Civil Procedure 36.
 - g. In accordance with Rule 30(d), each party shall be permitted to a length of one day of seven (7) hours per deposition, unless otherwise agreed upon by the parties or upon Motion and directed by the Court.
 - h. Each party shall exchange expert witness reports as articulated in the Parties' Joint Proposed Scheduling Order. Plaintiff will disclose Rule 26 Expert information by February 29, 2024, and Defendants will disclose Rule 26 expert information by April 1, 2024.
 - i. In accordance with Rule 26(e), each party shall supplement initial disclosures by the proposed deadline for completing discovery, April 30, 2024.

4. Other Items:

- a. **Initial Motions to Dismiss:** The Parties are in agreement that all such Motions to Dismiss should be filed by December 8, 2023.
- b. **Joinder of Additional Parties and Amendment to Pleadings:** The Parties are in agreement that all such Motions should be filed by November 10, 2023.
- c. **Final Dispositive Motions:** Plaintiff's Proposal is that the filing of any dispositive motion (i.e., Summary Judgment) should be completed within 30 days of the close of discovery on May 31, 2024. Defendants' Proposal is that filing of any dispositive motion be filed by August 2, 2024.
- d. **Final Witness & Exhibit Lists:** The Parties will defer to the Court and the Court's preference as to the exchange of Final Witness and Exhibit Lists based on the Trial Date set by the Court.
- e. **Prospects for Settlement:** Since no discovery in this matter has ensued, the Parties agree that settlement discussions are premature. However, as indicated in the Parties' Joint Proposed Scheduling Order, the Parties agree to stipulate to a Mediator by December 1, 2023 and engage in Mediation by February 29, 2024.
- f. **Pre-Trial Conference:** Plaintiff would propose October 23, 2024 be selected as a Pre-Trial Conference Date. Defendants' Proposal is that such date be set at a later time.

g. **Trial:** Plaintiff would propose October 30, 2024 be selected as a Trial Date.

Defendants' Proposal is that such date be set at a later time. The Parties agree that the trial will likely take 15 days.

Dated: September 8, 2023

Respectfully submitted,

/s/ Bryce T. Hensley

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CERTIFICATE OF SERVICE

I, Bryce Thomas Hensley, hereby certify that on September 8, 2023 I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, and that upon filing, such system will serve a copy of the foregoing upon all counsel of record in this action.

/s/ Bryce T. Hensley
Bryce T. Hensley